In the High Court for the States of Punjab and Haryana at Chandigarh

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RSA No.2881 of 2007

Date of decision: 24.9.2007

Vinod Kumar & others ... Appellant

Versus

Om Parkash .Respondent

Coram: **Hon'ble Mr.Justice Rajesh Bindal**

Present: Mr.Akshay Bhan, Advocate
for the appellants.
Mr.S.K.Garg Narwana, Advocate
for the respondent/Caveator

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RAJESH BINDAL,J.

The defendant is in appeal against the judgment and decree passed by the lower Appellate Court whereby the suit filed by the respondent for possession, by way of specific performance of agreement to sell, was decreed.

The respondent-plaintiff had filed caveat and accordingly, both the parties were heard at the motion stage itself.

Briefly, the facts are that the appellant-defendants entered into an agreement to sell land measuring 12 Bighas 7 Biswas at the rate of Rs.31,500/- on March 1,1989. The last date for execution of the agreement was 15.12.1989. However, thereafter, on 20.12.1989 it was extended upto 15.5.1990. In between Rs.47,000/- more was paid by the respondent-plaintiff. Thereafter, vide endorsement dated 5.3.1991 the agreement is stated to have been extended upto 30.6.1992 and additional sum of Rs.15000/- was paid making it a total of Rs.77, 000/-. The appellant having not executed the sale deed on 30.6.1992, the date fixed for the same, the respondent-plaintiff issued notice to the appellant on 5.3.1993. It was replied on 10.3.1993 taking the plea that there is no endorsement on 5.3.1991 extending the period upto 30.6.1992. Infact the extension was only up to 30.6.1990. The trial Court decreed the suit of the respondent-plaintiff only to the extent of refund of earnest money of Rs.77,000/-

paid by him along with interest at the rate of 12 % P.A. from the date of agreement to sell till the date of decree and at the rate of 6 % P.A. from the date of decree till realization. It may be added here that initially the suit filed by the respondent-plaintiff was dismissed by the trial Court on 20.8.2002. However, in appeal against the judgment, the same was remanded back by the Ist Appellate Court on 8.4.2004 by framing additional issue to specify the question as to whether the period in the agreement was extended on 5.3.1991. The appellants being not aggrieved against the judgment and decree of the trial Court did not prefer any appeal. However, the respondent-plaintiff preferred an appeal praying that his claim in toto was required to be accepted and a decree for specific performance deserved to be passed in favour of the respondent-plaintiff.

In appeal, the learned lower Appellate Court on consideration of the matter decreed the suit in toto and directed that the appellant-defendants are liable to execute the sale deed within two months by accepting the balance consideration after adjusting Rs.77, 000/- already paid.

By impugning the judgment and decree of the lower Appellate Court, learned counsel for the appellants submitted that the time was extended for execution of the agreement to sell and that the respondent-plaintiff having not attended the office of the Registrar for registration of the sale deed on 15.5.1990 the extended date, could not succeed in the suit as he himself was not ready and willing to adhere to the terms of the agreement. Once the period in the agreement had already expired, there was no question of its extension on 5.3.1991. This fact is totally denied by the appellant-defendants. He further submitted that the payment of Rs.15,000/-, i.e., Rs.5,000/- by way of cheque and Rs.10,000/- in cash could not be proved by the respondents as RW2 Assistant Manager of the Bank could not link the cheque claimed to have been issued by the respondent with the transaction in this behalf. It is submitted that there was cutting on the agreement where the date was mentioned as 30.6.1992, accordingly, the same could not be relied upon to pass a decree against them.

On the other hand, learned counsel for the respondent-caveator submitted that mere one fact is enough to non-suit the appellant,i.e., the trial

Court had decreed the suit of the respondent-plaintiff partially granting the relief to the extent of refund of Rs.77,000/- paid by him as earnest money for sale of the property which included Rs.15,000/- paid on the date of extension of agreement i.e., on 5.3.1991. The appeal was not filed by the appellants against the judgment and decree of the trial Court meaning thereby it was accepted by them that sum of Rs.15,000/- was received by them when the endorsement regarding extension of time was made on 5.3.1991. It is further submitted that the plea raised by the appellants is totally misconceived when it is stated that the extension of the agreement was only up to 30.6.1990 when the extension itself was being made on 5.3.1991. There is no plea raised by the appellants regarding overwriting on the endorsement for extension of time to the effect that the date was changed from 30.6.1991 to 30.6.1992 as their plea was only that there was no extension whatsoever on 5.3.1991. The signatures of two of the vendors were duly proved on record by the expert witnesses produced by the respondent and the same was also not denied by the expert witnesses produced by the appellants. Accordingly, the prayer made is that the appeal is merit less and the same deserves dismissal.

Having heard learned counsel for the parties, I find merit in the contention raised by the Caveator-respondent. Once the extensions were being granted by the appellants to raise a plea that the time was the essence of the agreement is neither here nor there. Another fact which goes against the appellants is that they did not challenge the judgment and decree of the trial Court where the refund of Rs.77,000/- was directed to be refunded to the respondent, which included the amount paid on the date the extension was made on 5.3.1991. It was only a sum of Rs.15,000/- which was claimed to have been paid by the respondent to the appellants thereafter, the dispute was there. The total consideration of the sale comes to about Rs. One lac out of which, admittedly, Rs. 77,000/- was received by the appellants up to the date of extension i.e.,5.3.1991. Even though another Rs. 15,000/- claimed to have been paid by the respondent, the same was disputed. Meaning thereby that substantial part of the sale consideration had been paid to the appellants. The

signatures on the endorsement regarding extension on 5.3.1991, is also proved on record. The plea that the extension was only upto 30.6.1990 cannot be believed, when the date of extension itself was 5.3.1991.

In view of the above discussion, I do not find any merit in the present appeal. Accordingly, the same is dismissed in limine.

September 24,2007 (Rajesh Bindal)
nk Judge